



State of West Virginia  
Office of the Attorney General

Patrick Morrissey  
Attorney General

October 17, 2014

(304) 558-2021  
Fax (304) 558-0140

**Via Certified Mail & Email**

The Honorable Gina McCarthy  
National Freedom of Information Office  
Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460  
hq.foia@epa.gov

OFFICE OF THE  
EXECUTIVE SECRETARY

2014 OCT 27 AM 6:59

FILE

**Re: Freedom of Information Act Request From The States Of West Virginia, Kansas, Louisiana, Nebraska, Oklahoma, South Carolina, and Wyoming, and the Commonwealth of Kentucky, Concerning EPA's 2011 Settlement Agreement, Docket No. EPA-HQ-OGC-2010-1057**

Dear Administrator McCarthy:

This letter is a request under the Freedom of Information Act, 5 U.S.C. § 552(a) *et seq.* (the "Act"), for information concerning communications relating to the implementation of a 2011 settlement agreement (the "2011 Settlement Agreement") between the Environmental Protection Agency ("EPA") and the States of New York, California, Connecticut, Delaware, Maine, New Mexico, Oregon, Rhode Island, Vermont, and Washington, the Commonwealth of Massachusetts, the District of Columbia, and the City of New York, and Natural Resources Defense Council, Sierra Club, and Environmental Defense Fund. *See* Dkt. No. EPA-HQ-OGC-2010-1057. The rules that EPA has proposed pursuant to the 2011 Settlement Agreement threaten to cause severe harm to the citizens of our States, forcing coal miners to lose their jobs and leading energy prices to skyrocket.

In the 2011 Settlement Agreement, EPA committed to proposing standards of performance under Section 111 of the Clean Air Act, 42 U.S.C. § 7411, for new, modified, and existing power plants that include emission standards for carbon dioxide. *See* Dkt. Nos. EPA-HQ-OGC-2010-1057-0002; EPA-HQ-OGC-2010-1057-0036. EPA has heretofore abided by this settlement, proposing standards of performance for new coal-fired power plants (79 Fed. Reg.

1430 (Jan. 8, 2014)) modified coal-fired power plants (79 Fed. Reg. 34,960 (June 18, 2014)), and existing coal-fired power plants (79 Fed. Reg. 34,830 (June 18, 2014)). These proposed rules are rife with numerous legal defects. *See, e.g.*, Formal Comment Letter on Proposed Performance Standards for New Power Plants from the State of West Virginia et al. to Gina McCarthy, Adm'r, EPA (May 9, 2014); Letter on EPA's Section 111(d) Authority from Patrick Morrissey, Att'y Gen. of W. Va., to Gina McCarthy, Adm'r, EPA (June 6, 2014); Brief for the State of West Virginia et al. as Amicus Curiae Supporting Petitioner, *In re: Murray Energy Corporation*, No. 14-1112, 2014 WL 2885937 (D.C. Cir. June 25, 2014); Petition for Review, *State of West Virginia et al. v. EPA*, No. 14-1146 (D.C. Cir. Aug. 1, 2014).

We request that you provide a copy of any of the following documents (including any and all written or electronic correspondence, electronic records, facsimiles, information about meetings and/or discussions, and transcripts and notes of any such meetings and/or discussions) from January 1, 2010, to the date of this letter between EPA officials and any persons representing, or otherwise associated with, one or more party to the 2011 Settlement Agreement—the States of New York, California, Connecticut, Delaware, Maine, New Mexico, Oregon, Rhode Island, Vermont, and Washington, the Commonwealth of Massachusetts, the District of Columbia, and the City of New York, and Natural Resources Defense Council, Sierra Club, and Environmental Defense Fund—that contain any of the following words:

- “settlement”
- “111”
- “111(b)”
- “111(d)”
- “7411”
- “7411(b)”
- “7411(d)”
- “42 U.S.C § 7411”
- “42 U.S.C § 7411(b)”
- “42 U.S.C § 7411(d)”
- “power plants”
- “EGUs”
- “coal”
- “coal-fired”
- “carbon dioxide”
- “CO<sub>2</sub>”
- “greenhouse”
- “GHG”
- “AEP v. Connecticut”
- “AEP”

- "New Jersey v. EPA"
- "literal"

We further request that you provide a copy of any of documents (including any and all written or electronic correspondence, electronic records, facsimiles, information about meetings and/or discussions, and transcripts and notes of any such meetings and/or discussions) from January 1, 2010, to the date of this letter, which references the 2011 Settlement Agreement in any way, without regard to the recipient or author of the document.

We also request that you waive any applicable fees. As you know, a fee waiver is appropriate when disclosure is in the public interest and not in a commercial interest. See 45 C.F.R. § 5.45(a) *et seq.* This request for information about an important aspect of your agency's implementation of the 2011 Settlement Agreement unquestionably satisfies these requirements. Disclosure of the requested documents is directly in the public interest. The actions that EPA has taken pursuant to the commitments made in the 2011 Settlement Agreement will affect thousands of West Virginians, either through jobs in the coal mining or power generation sector or by way of higher electricity rates. A fee waiver is thus clearly appropriate, and we reserve our right to appeal a denial of such waiver.

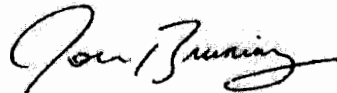
In light of the importance of this inquiry to the public, we respectfully request that you disclose all responsive documents as soon as possible, but no later than 20 business days from receipt of this letter, as required under the Act. Should you assert that any of the material is exempt from disclosure, please redact the allegedly exempt sections and provide the remaining material. In each instance, please describe the redacted material in detail and specify the statutory bases for refusing to disclose the material. We reserve the right to appeal the withholding or deletion of any information.

Thank you in advance for your prompt cooperation in this important matter.

Sincerely,




Patrick Morrisey  
West Virginia Attorney General



Jon Bruning  
Nebraska Attorney General



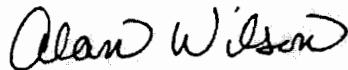
Derek Schmidt  
Kansas Attorney General



E. Scott Pruitt  
Oklahoma Attorney General



Jack Conway  
Kentucky Attorney General



Alan Wilson  
South Carolina Attorney General



James D. "Buddy" Caldwell  
Louisiana Attorney General



Peter K. Michael  
Wyoming Attorney General

**Lewis, Judith**

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**From:** Leavy, Jacqueline  
**Sent:** Monday, October 27, 2014 10:42 AM  
**To:** FOIA HQ  
**Subject:** FOIA Request  
**Attachments:** 15-000-1071.pdf

Good Morning,

Will forward the original letter to Larry Gottesman via interoffice mail. Thank you.



State of West Virginia  
Office of the Attorney General  
Patrick Morrissey  
State Capitol Building 1 Rm. E-26  
1900 Kanawha Boulevard, East  
Charleston, WV 25305

CERTIFIED MAIL



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